The question for decision here is whether the accused was in lawful custody after the expiry of 24 hours from 7.55 a.m. on 11th July, 1965. It is evident from the facts in the present case that up to the time the plaintiffs left the police station at 8.30 a.m. on 12th July, 1965 they were already in police custody for 24 hours 35 minutes. Section 28 of the Criminal Procedure Code expressly states that the necessary time taken for the journey from Bukit Tinggi to the magistrate's court at Temerloh must be excluded. The distance between these two places I take it to be more than 50 miles of hilly country which in normal circumstances would take more than an hour. It is therefore fair to say that in the circumstances the plaintiffs were in lawful custody well within 24 hours.

If I am wrong in the calculation of time, I hold that 11th July, 1965 being a Sunday, it was not possible for the plaintiffs to be produced before the *ex-officio* magistrate for purposes of remand. Had they left at 7.55 a.m. on Monday 12th July, 1965 (which was within the 24-hour period) they would not, in my opinion, have been produced until 8.30 a.m. or thereabout, bearing in mind that there is no resident magistrate in Temerloh and that it would in any event be some time to take the plaintiffs from the court house to the district office.

I will therefore dismiss both the plaintiffs' claim with costs.

Claim dismissed.

Solicitors: *Xavier & Thambiah.*

LEE YOU SUEN v. LIEW LOK & ORS.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) March 28, 1967]

[K.L. — Federal Court Civil Appeal Nos. X.29, X.30 & X.31 of 1966]

Negligence — Motor accident — Headlong collision — Allegation of contributory negligence — Rejected by Federal Court.

Damages — Headlong collision — Allegation of contributory negligence — Review of evidence on appeal.

As a result of a headlong collision between a passenger omnibus and a Morris Minor, the driver and all four passengers in the smaller vehicle lost their lives. Subsequently three actions arose in the High Court at Ipoh, in which representatives of the passengers claimed damages against the representatives of the deceased driver and the driver of the bus, alleging negligence on the part of both drivers or either of them. The particulars of negligence, in the usual form, included failure to keep a proper look-out, driving at an excessive speed and driving onto the wrong side of the road. The actions were tried together by Gill J., who held the drivers of the car and bus liable in the proportion of 25% and 75% respectively.

The second defendant appealed against such decision on the ground that the other driver should have been held solely to blame or, at any rate, that the other's assessed share of blame should have been considerably higher.

Held: (1) granting the appellant every indulgence and making every allowance for inaccuracies in his estimate of distance, the irresistible inference from his own account was that he was taking no pains whatever to keep any look-out at all but negligently assumed that the lonely road he travelled would continue so round the bend. This fact and the evidence of encroachment were not mutually consistent but each fortified the other. There was therefore clear evidence of negligence on the part of the appellant;

(2) there was no evidence of speeding by the deceased driver, except what the appellant alleged to exonerate himself. The order of court below should therefore be set aside, and the award of damages made against the appellant solely.

Case referred to:—

(1) *France* v. *Parkinson* [1954] 1 W.L.R. 581, 584.

FEDERAL COURT.

W. S. W. Davidson for the appellant.

Richard Ho for 1st respondent.

G. Tara Singh Sidhu for the 2nd respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: As a result of a headlong collision between a passenger omnibus and a Morris Minor, the driver and all four passengers in the smaller vehicle lost their lives. Subsequently three actions arose in the High Court at Ipoh, in which the representatives of the passengers claimed damages against the representative of the deceased driver and the driver of the bus, alleging negligence on the part of both drivers or either of them. The particulars of negligence, in the usual form, included failure to keep a proper look-out, driving at an excessive speed and driving onto the wrong side of the road. The actions were tried together by Gill J., who held the drivers of the car and bus liable in the proportion of 25% and 75% respectively.

The second defendant now appeals against such decision on the ground that the other driver should have been held solely to blame or, at any rate, that the other's assessed share of blame should have been considerably higher. Although the representative of the deceased driver has not cross-appealed, the effect of these appeals, of course, is to reopen the question of liability so as to leave it entirely at large.

The evidence was extremely meagre. Apart from the fact that death had left no witness among those travelling in the Morris Minor, there were no eye-witnesses of the accident, other than this appellant, because it occurred on a lonely stretch of road devoid of pedestrian or other traffic. In the result, the only evidence adduced on the part of the plaintiffs — apart from evidence affecting the quantum of damages, as to which no question is raised — consists of the testimony of the investigating police officer who produced the plan he had made of the scene, half-a-dozen photographs and the Vehicles Examiner's report on the two vehicles. The

claims are consequently based largely on *res ipsa loquitur*.

The accident occurred at 9.30 a.m. on January 29, 1963, somewhere along a large bend of the Teluk Anson-Kampar road near the 35½ milestone. The road was dry and the weather fine. The exact point where the vehicles met in headlong collision was not ascertainable either from the plans or photographs. Consequently the only available explanation, for what is was worth, came from the appellant. His evidence was, to quote Birkett L.J. in *France* v. *Parkinson*,(1) "the customary thing one hears: 'The man came at a furious rate and gave me no chance'." Not surprisingly, therefore, the learned trial judge did not accept it at its face value, but proceeded thus:—

"On a careful examination of the plan and the photographs which were put in evidence, I was satisfied that the motor car never encroached on the wrong side. It was abundantly clear from the distance which the bus travelled after the impact before it came to a stop that the bus was travelling certainly at more than 35 miles per hour. From its position after the accident I was satisfied that the driver of the bus was not telling the truth when he said he swerved to the left.

The impression I formed on consideration of the whole of the evidence was that the bus driver was not paying much attention to the road when he was about to negotiate the bend and that his bus went over the white line. The driver of the car also, in my opinion, was travelling fast and took no avoiding action. He was not entering a blind corner, so that if he was keeping a proper look-out he should have seen the bus coming from the opposite direction and taken some action to slow down and stop or move a bit more to his left. In the circumstances I was not prepared entirely to absolve the driver of the car of any blame for the accident. In my opinion, the driver of the bus was more to blame for the accident than the driver of the car. As between the driver of the car and the driver of the bus, I therefore apportion liability in the ratio of 25% to 75% which, in my opinion, was the most appropriate apportionment."

Mr. Davidson criticised this judgment on various grounds: (a) that the sketch plan and photographs afforded no more evidence of encroachment by one vehicle than by the other upon its wrong side; (b) that the judge was merely guessing the speed of the bus, due to misappreciation of evidential data; (c) that the position of the bus when it came to rest gave no indication of its position on the road before the collision and (d) that the finding of inattention, causing the appellant to stray across the white line, was contrary to the evidence.

Before examining the evidence afresh, I would make two preliminary observations: (a) that the police inspector's plan was not drawn to scale and depicted exaggerations so substantial as to be highly misleading if this fact is not clearly borne in mind; and (b) that before any inferences are drawn, it is important to test the validity of the primary facts, lest such inferences be mere speculation.

Dealing now with the arguments of Mr. Davidson, as to encroachment by one vehicle or the other on its wrong side, I think with the greatest respect, that the reasons stated for the judge's conclusion do not quite support the inference. For one thing, the distance travelled by the bus after impact could only be guessed. It would be more than the length of the track marks "DF", "DE" (which were 110 feet and 109 feet) but how much more is hard to say, except only approximately, by taking into account the final position of the Morris. The point of impact, in my view, would be on the Teluk Anson side of "I"., since the lighter of the two vehicles would be the one to be brushed aside by the vastly superior weight and momentum of the heavier. There is moreover, the established fact that the collision caused such serious damage to the brake mechanism that it was immediately put out of action. The distance travelled before the bus came to a stop would thus be no evidence of speed, as in the normal case of braking to a halt. In any case, a modern bus travelling on a good dry surface at 35, or even 45, miles per hour around the type of bend as shown in the photographs, should have remained well under control. My own conclusion, therefore, is that the speed of the bus contributed little, if anything, towards the accident.

On the other hand, there are other grounds, not stated, which would clearly support the inference of encroachment drawn by the learned trial judge. I refer now to the plan. That the track marks were indubitably made by the bus was proved by the inspector. The important fact to remember is that the offside track "DE", at "D", was only 9 inches from the centre line. This track could only have been made after the appellant, as he claimed, had swerved to his left in evasive action. In the judge's place I should have stated this finding of a primary fact. I see no reason why this fact should not be taken as conclusively proved. From this premise it follows that, if the offside wheels at that point were barely 9 inches within its own half of the road, then the bus must have been encroaching considerably on to the wrong side before it swerved back to the left.

One must beware of being misled by the graphic exaggerations appearing in the police plan. Take, for instance, certain measures of distance depicted therein. "D" to the nearest point of the white centre line was only 9 inches, but measured ½ inch on the plan. The track marks from "C" and "D" to where they entered the grass verge on the right measured 44 to 40 feet respectively, yet on the plan they were represented by lines of 2¾ and 1¾ inches only. The tracks of the bus represented those of a vehicle only one-third the width of half the roadway, roughly 3 feet, instead of approximately 9/10 of 9 feet. If one's mental image of this plan is, as it should be, adjusted accordingly, and

the photographs of the bus carefully studied, it will be realised that the bus ran practically straight ahead from "D" to the point where it came to rest. Thus the exaggerated curved lines in the plan were highly misleading.

Having come to the above conclusion as to encroachment, I turn first to the evidence of the police inspector and next to that of the appellant himself. According to Inspector Balbeer Singh, the bend was not a blind corner and, coming from Teluk Anson, "it was possible to see about 100 yards round the bend." The high vantage point of the bus-driver's seat should have afforded him an even better field of view of at least the distance stated by the inspector. That being so, I proceed to examine the appellant's evidence to see when the oncoming Morris Minor came into his view. On this point he said: "When I saw the car encroaching on my side of the road it was 60 or 70 feet away. That was the first time I saw the car. At that time I was turning the corner". He then repeated, "The first time I saw the car it was 60 to 70 feet away and it was encroaching on my side." Then he went on, *"If I had seen the car when it was 100 feet away the collision would have been avoided.* There was a bend. I could not see the car earlier." Finally, in re-examination by his own counsel he said, *"I cannot remember now whether I saw the car or not as it entered the bend."*

Granting the appellant every indulgence, and making every allowance for inaccuracies in his estimate of distance, I think the irresistible inference, from his own account, is that he was taking no pains whatever to keep any look-out at all, but negligently assuming that the lonely road he travelled would continue so round the bend. This fact, and the evidence of encroachment, are not only mutually consistent, but each fortifies the other. How could he have failed to notice the oncoming car had he been looking ahead? Accordingly, I am as satisfied as the learned trial judge that there was clear evidence of negligence on the part of the appellant.

With the greatest respect, however, I take a different view of the deceased driver's share of blame for the accident. Of him the judge said: "The driver of the car also, in my opinion, was travelling fast and took no avoiding action." Yet, in spite of the most careful perusal of the record, I can find no evidence of speeding on his part, except what the appellant alleged to exonerate himself. The aggregate velocities of car and bus travelling at, say 35 miles per hours each, would be 70 miles per hour. The appalling wreckage of the car, therefore, would give no indication of its speed. It would have been as badly damaged, were it stationary when struck by the bus going at 35 miles per hour. Nor again, was there any evidence whatsoever that he failed to take evasive action, or even any evidence that he was left sufficient room to do so. Remembering that the road was only 18 feet wide, that the width of a passenger bus takes up almost half this road (I am informed by the registrar and inspector of motor vehicles that this particular bus AB. 6028 was 7′ 6″ wide and 29′ 10″ long), what evidence was there which makes it fair or reasonable that he should shoulder part of the blame? If the bus had suddenly gone a few feet over the white line, would the shock and surprise not have had such an effect that the car driver would have been frozen for a second or two? At the joint speed of 70 miles per hour, the vehicles would be hurtling towards each other at about 105 feet per second. Is it reasonable to expect that in a split second the driver ought to have made the agonising decision of ditching his car? I do not think such standard of care is required of him in the eyes of the law.

For my part, therefore I would set aside the order of the court below, and award damages against this appellant solely. Costs of this appeal to both respondents, and in the court below, a *Bullock* order.

Barakbah L.P. and **Azmi C.J. (Malaya)** concurred.

Appeal dismissed.

Solicitors: *Gibb & Co.; Murphy & Dunbar; Khoo & Sidhu.*

LEAW MEI LEE v. ATTORNEY-GENERAL & ORS.

[F.C. (Barakbah L.P., Ong Hock Thye F.J. and Raja Azlan Shah J.) April 1, 1967]

[K.L. — Federal Court Civil Appeal No. X.97 of 1966]

Advocate & Solicitor — Admission of — Barrister — Petition for — Reading in Chambers and attendance at post-graduate course concurrently — "Previously" — Meaning of — Advocates & Solicitors Ordinance, 1947, s. 5(3)(a).*

* The material part of section 5(3) of the Advocates and Solicitors Ordinance, 1947 as amended is as follows:

"Before any order shall be made by the court on his petition every petitioner . . . shall have continuously attended and received instruction in law in the office in (Malaya) of a practising practitioner of not less than seven years' standing at the Bar of (Malaya) . . . namely:

(a) if the petitioner is a barrister of England . . . and has previously been a pupil of or read in the chambers of a practising barrister . . . of more than seven years' standing; and has

(i) been a pupil or read in chambers or in such office as aforesaid for six months or longer — a period of not less than six months;

(ii) . . . . . .

Provided that where a petitioner has obtained either a certificate issued by the Council of Legal Education that he has satisfactorily completed the Council's Post Final Practical Course, or a certificate issued by the University of Malaya that he has satisfactorily completed a post graduate course of instruction organised by the university, the provisions of this paragraph shall apply to such petitioner as if he had been a pupil or read in chambers as aforesaid for a period of six months.

(b) if the petitioner is a solicitor . . . of England . . .

(c) in any other case — a period of not less than twelve months".